

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/052647

International filing date (day/month/year)
25.10.2004

Priority date (day/month/year)
29.10.2003

International Patent Classification (IPC) or both national classification and IPC
A23G9/28, A23G9/04

Applicant
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1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA220.

3. For further details, see notes to Form PCT/ISA220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/052647

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/052647

**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial
applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 5,8,11

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 5,8,11 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☐ no international search report has been established for the whole application or for said claims Nos.
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

- ☐ has not been furnished
- ☐ does not comply with the standard

the computer readable form

- ☐ has not been furnished
- ☐ does not comply with the standard

- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/052647

**Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, inventive step or
Industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-4,6,7,9,10,12,13
	No: Claims	
Inventive step (IS)	Yes: Claims	9,10,12,13
	No: Claims	1-4,6,7
Industrial applicability (IA)	Yes: Claims	1-4,6,7,9,10,12,13
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/052647

Re Item III.

The application does not meet the requirements of Article 6 PCT, because claims 5, 8 and 11 are not clear:

- a.) In claim 5, which depends on claim 1, the diluting liquids an/or the syrups to be dosed are defined being supplied pneumatically. In contrast to this, according to claim 1, however, it is specified that these liquids are to be added via pumps.
- b.) Claim 8 uses the feature of "the double-acting cylinder" in the definition of its subject-matter. Since no such cylinder has been specified in the claims claim 8 depends on, the subject-matter of claim 8 is unclear.
- c.) According to claim 11, the steps of claim 8 are to be repeated under certain conditions. However, in claim 8 no process steps whatsoever have been specified. therefore, the subject-matter of claim 11 is unclear.

Re Item V.

- 1 The following documents are referred to in this communication:
 - D1 : EP 0 599 140 A (CARPIGIANI SRL) 1 June 1994 (1994-06-01)
 - D2 : EP 0 701 777 A (LUMEN GMBH) 20 March 1996 (1996-03-20)

2 INDEPENDENT CLAIM 1

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 1 does not involve an inventive step in the sense of Article 33(3)PCT.

- 2.1.1 Document D1, which is considered to represent the most relevant state of the art to the subject matter of claim 1, discloses a machine for making and dispensing ice cream according to the preamble of present claim 1, that is provided with ports for the addition of syrup and water, a spindle that drives a rotor, and a piston for controlled closure of injection ports (see col. 2, line 17 -

col. 3, l.55).

- 2.1.2 The subject-matter of independent claim 1 differs from the disclosure of D1 in that it further defines pumps via which syrup and a dilution liquid are to be dosed into the nozzle.
- 2.1.3 While the addition of water as already known from D1 easily qualifies as being addition of a dilution liquid in the meaning of claim 1 of the present application, the use of pumps for dosing syrup to ice cream dispensing nozzles is well known in the art, and already disclosed in e.g. D2.
- 2.1.4 Therefore the features disclosed in D1 and D2 would be combined by the skilled person, without exercise of any inventive skills in order to solve the problem posed. The proposed solution in independent claim 1 thus cannot be considered inventive (Article 33(3) PCT).

3 DEPENDENT CLAIMS 2-4, 6, 7

Dependent claims 2-4,6 and 7 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT), because they are already known from D2, or are obvious design features and well known to the skilled person..

4 DEPENDENT CLAIMS 9,10,12,13

The combination of the features of dependent claims 9,10,12 and 13 are only allowable when depending on an allowable independent claim.